

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of) File Number: EB-10-SF-0187
)
Ira Jones) NAL/Acct. No.: 201132960001
)
Merced, California) FRN: 0020643425

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 8, 2011**Released:** March 10, 2011

By the District Director, San Francisco Office, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find that Ira Jones (“Jones”), owner and operator of a Citizens Band (“CB”) radio station in Merced, California, apparently willfully and repeatedly violated section 303(n) of the Communications Act of 1934, as amended (“Act”),¹ and section 95.426(a) of the Commission’s rules (“Rules”)² by failing to permit inspection of the CB radio station. We conclude, pursuant to section 503(b) of the Act,³ that Jones is apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000).

II. BACKGROUND

2. On March 19, 2010, agents from the Enforcement Bureau’s San Francisco Office (“San Francisco Office”) responded to a complaint regarding radio frequency interference within the radio communication system equipment of the Merced County Fire Department. The agents observed that transmissions on CB radio station frequency 27.165 MHz appeared to match the audio distortion received on frequency 154.4 MHz within the Merced County Fire Department’s audio receiver and speaker system in what appeared to be audio rectification interference within the department’s receiver and speaker system.⁴ The agents then monitored the radio transmissions on frequency 27.165 MHz and used radio direction finding techniques to locate the source of the signal associated with the interference to a CB radio station operating from Jones’s residence in Merced, California.

3. On March 26, 2010, agents from the San Francisco Office again monitored frequency 27.165 MHz and used radio direction finding techniques to locate the source of the signal creating the audio rectification interference to a CB radio station operating from Jones’s residence in Merced, California.

¹ 47 U.S.C. § 303(n).

² 47 C.F.R. § 95.426(a), (CB Rule 26).

³ 47 U.S.C. § 503(b).

⁴ *Audio rectification* interference occurs when an electronic circuit (usually an amplifier), which ideally should respond only to audio frequency signals, responds to external radio frequency (RF) signals. Typically, the circuit picks up signals from a nearby radio transmitter in addition to the sound the listener wants to hear. The unwanted signal may be constant or intermittent, faint or uncontrollably loud.

Later the same day, the agents approached Jones's residence, knocked on his door, identified themselves as agents of the FCC and presented their official badges and credentials. The individual identified himself as Jones. The agents told Jones about the radio frequency interference complaint from the nearby Merced County Fire Department and asked him if he was the owner or operator of the CB radio station. Jones acknowledged that he was the operator of the CB radio station but denied causing any interference to the Merced County Fire Department. The agents then requested that they be allowed to inspect the CB radio station to determine the cause of the interference. Jones denied the agents' request to inspect the CB radio station. The agents warned Jones that refusing to allow an inspection of a CB radio station is a violation of section 95.426(a) of the Rules⁵ and section 303(n) of the Act,⁶ explaining that these rules require CB operators to make their stations available to authorized FCC representatives for inspection. Jones again denied the request and asserted that the FCC must have a search warrant to inspect his CB station. The agents advised Jones that he was required to take necessary precautions to avoid causing radio interference by operating at power levels that do not exceed legal limits and by refraining from using a radio frequency power amplifier.

4. Prior to leaving the premises, the agents issued an on-scene "Notice of Unlicensed Operation" ("First Notice") to Jones. The First Notice expressly warned that Jones's refusal to allow inspection of his radio equipment violated section 303(n) of the Act and included the full text of section 303(n). Jones refused to accept a copy of the First Notice and the agents left the document on a chair near the front door of the house. The agents then left the premises, but continued to monitor 27.165 MHz and heard Jones describe the agents' attempted inspection. Later on March 26, 2010, the agents again monitored frequency 27.165 MHz and noted that Jones was operating his CB radio station without causing interference to the Merced County Fire Department radio communication equipment. Subsequently, the Merced County Fire Department reported that the interference ceased.

5. On August 25, 2010, the San Francisco Office received another complaint from the Merced County Fire Department that the interference to its radio communication equipment had resumed over the prior two weeks and appeared to again be caused by a CB radio station operated by Jones. According to the complainant, the interference lasted from 10 minutes to 45 minutes at a time and Jones's CB radio station could be clearly heard on the radio communication equipment at the Merced County fire station during these times.

6. On August 27, 2010, agents from the San Francisco Office again monitored frequency 27.165 MHz and used radio direction finding techniques to locate the source of the interfering signal to a CB radio station operating from Jones's residence in Merced, California. Later the same day, the agents, along with two Merced City police officers, approached Jones at his front yard, identified themselves as agents of the FCC and presented their official badges and credentials. The two Merced City police officers identified the man as Jones. The agents told Jones about the radio frequency interference complaint and requested that they be allowed to inspect the CB radio station to determine the cause of the interference. Jones denied the request. Jones again admitted that he was the owner and operator of the CB radio station, but stated that he was not the owner of the house and that he had to refuse the inspection. Jones understood that refusal to allow an inspection could result in a \$7,000 forfeiture assessment. After further conversation with the agents and the police officers, Jones subsequently admitted to being the owner of the house. The agents again requested that they be allowed to inspect the CB radio station and reiterated that Jones's refusal to allow an inspection of a CB radio station is a violation of section 95.426(a) of the Rules and section 303(n) of the Act and is subject to a forfeiture. Jones again denied the request to inspect his CB station. The agents then gave Jones an oral warning and issued a second on-scene "Notice of Unlicensed Operation" ("Second Notice") to Jones. The Second Notice expressly warned that Jones's refusal to allow inspection of

⁵ 47 C.F.R. § 95.426(a), (CB Rule 26).

⁶ 47 U.S.C. § 303(n).

his radio equipment violated section 303(n) of the Act and included the full text of section 303(n). Jones refused to accept a copy of the Second Notice and the agents left the document on a wooden yard border. The agents then left the premises.

7. On September 1, 2010, the San Francisco Office received another complaint from the Merced County Fire Department stating that Jones had resumed CB radio station operation at approximately 5:30 p.m., and interference within the Merced County Fire Department radio communication system equipment had also resumed.

III. DISCUSSION

8. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully or repeatedly fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁷ The term “repeated” means the commission or omission of such act more than once or for more than one day.⁸

9. Section 303(n) of the Act states that the Commission has the “authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307(e)(1).”⁹ Section 307(e)(1) expressly includes “the citizen band radio service.”¹⁰ Additionally, section 95.426(a) of the Rules (CB Rule 26) states “[i]f an authorized FCC representative requests to inspect your CB station, you must make your CB station and records available for inspection.”¹¹ The Commission has no requirement that an agent obtain a warrant prior to conducting such an inspection.¹²

10. On March 26, 2010 and August 27, 2010, agents from the San Francisco Office located the source of the signal on 27.165 MHz to Jones’s residence in Merced, California. On each of these dates, in

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act....” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

⁸ Section 312(f)(2) of the Act, 47 U.S.C. § 312(f)(2), which also applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘repeated’, when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.”

⁹ 47 U.S.C. § 303(n) (The Commission shall “[h]ave authority to inspect all radio installations associated with stations required to be licensed by any Act, or which the Commission by rule has authorized to operate without a license under section 307 (e)(1) of this title, or which are subject to the provisions of any Act, treaty, or convention binding on the United States, to ascertain whether in construction, installation, and operation they conform to the requirements of the rules and regulations of the Commission, the provisions of any Act, the terms of any treaty or convention binding on the United States, and the conditions of the license or other instrument of authorization under which they are constructed, installed, or operated.”).

¹⁰ 47 U.S.C. § 307(e)(1) (“[T]he Commission may by rule authorize the operation of radio stations without individual licenses in the . . . citizens band radio service. . . .”).

¹¹ 47 C.F.R. § 95.426(a).

¹² See *Norfolk Southern Railway Company*, 11 FCC Rcd 519 (CIB 1996) (The right to inspect a station is one of the cornerstones of the FCC’s ability to ensure compliance with the Communications Act and the FCC regulations). See also, *Randall R. Gaines*, 72 FCC 2d 871, ¶13 (Rev. Board 1979) (A search warrant is not required for an inspection of a CB radio station).

an effort to determine the cause of the reported interference created within the Merced County Fire Department radio communication equipment and to resolve it, the agents requested an inspection of Jones's CB radio station. Jones denied both requests, despite the fact that at both inspections, the San Francisco agents explained section 95.426(a) of the Rules (CB Rule 26) and section 303(n) of the Act to Jones, and provided Jones repeated verbal and written on-scene warnings by the agents of the consequences of refusing to allow an inspection of a radio station. Based on the record evidence, we find that Ira Jones apparently willfully and repeatedly violated section 303(n) of the Act and section 95.426(a) of the Rules by failing to permit inspection of his CB radio station.

IV. CONCLUSION

11. Pursuant to the Commission's *Forfeiture Policy Statement* and section 1.80 of the Rules, the base forfeiture amount for failing to permit inspection is \$7,000.¹³ In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in section 503(b)(2)(E) of the Act, which include the nature, circumstances, extent, and gravity of the violations, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.¹⁴ Considering the entire record and applying the *Forfeiture Policy Statement*, section 1.80, and the statutory factors to the instant case, we conclude that Ira Jones is apparently liable for a \$7,000 forfeiture.

12. We also warn Jones that operation of his CB radio station with more power than authorized (AM (A3) – 4 watts (carrier power) SSB – 12 watts (peak envelope power)) is a violation of section 95.410 of the Rules.¹⁵ Use of a transmitter which has carrier or peak envelope power in excess of that authorized will void Jones's authority to operate the station.¹⁶ We further warn Jones, pursuant to section 95.423 of the Rules,¹⁷ that overpowered operation of his CB radio station appears to be creating the interference within the Merced Fire County Department radio communications system. Mr. Jones must operate his CB station in compliance with the FCC's Rules and at the power limit indicated above. Failure to abide by these rules may result in additional sanctions and monetary forfeitures.

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Communications Act of 1934, as amended, and sections 0.111, 0.311, 0.314 and 1.80 of the Rules, Ira Jones is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of seven thousand dollars (\$7,000) for violations of section 303(n) of the Act and section 95.426(a) of the Rules.¹⁸

14. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Rules, within thirty days of the release date of this *Notice of Apparent Liability for Forfeiture*, Ira Jones **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

¹³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80.

¹⁴ 47 U.S.C. § 503(b)(2)(E).

¹⁵ 47 C.F.R. § 95.410, (CB Rule 10).

¹⁶ 47 C.F.R. § 95.410(c), (CB Rule 10).

¹⁷ 47 C.F.R. § 95.423, (CB Rule 23).

¹⁸ 47 U.S.C. §§ 503(b), 303(n); 47 C.F.R. §§ 0.111, 0.311, 0.314, 1.80, 95.426(a).

15. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters “FORF” in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.¹⁹ Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Ira Jones shall also send electronic notification on the date said payment is made to WR-Response@fcc.gov.

16. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to Sections 1.80(f)(3) and 1.16 of the Rules. The written statement must be mailed to Federal Communications Commission, Enforcement Bureau, Western Region, San Francisco Office, 5653 Stoneridge Drive, Pleasanton, California, 94588-8543, and must include the NAL/Acct. No. referenced in the caption. An electronic copy shall also be emailed to WR-Response@fcc.gov.

17. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

18. **IT IS FURTHER ORDERED** that a copy of this *Notice of Apparent Liability for Forfeiture* shall be sent by Certified Mail, Return Receipt Requested, and regular mail, to Ira Jones at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Thomas N. Van Stavern
District Director
San Francisco District Office
Western Region
Enforcement Bureau

¹⁹ See 47 C.F.R. § 1.1914.